

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION)	CASE NO. 1:17-MD-2804
OPIATE LITIGATION)	
)	SPECIAL MASTER COHEN
THIS DOCUMENT RELATES TO:)	
“All Cases”)	<i>AMENDED</i>
)	DISCOVERY RULING NO. 14, PART 22
)	REGARDING WALMART’S
)	PRIVILEGE CLAIMS

On reconsideration, the Special Master issues this *amended* Ruling, which modifies docket no. 3650. The rulings set out in bold in the table at the end of this Ruling are changed.

AGENDA ITEM 299

During Track Three discovery, defendant Walmart withheld production of certain documents based on attorney-client privilege. Plaintiffs took issue with a number of those decisions, and the parties engaged in a productive meet-and-confer process that narrowed the number of disputed documents. Plaintiffs requested *in camera* review of seventeen of the remaining disputed documents. Walmart submitted the disputed documents to the Special Master for *in camera* review and both parties submitted a chart summarizing their arguments regarding each contested document. Walmart also submitted a letter brief detailing its arguments in support of privilege and other supporting documents. Having considered these submissions carefully, the Special Master now rules on the challenged documents.

I. Legal Standards.

The Special Master has applied the legal standards and authorities set out in **all** prior “Discovery Rulings No. 14, Part x,” and incorporates them by reference.¹ *See, e.g., Zigler v. Allstate Ins. Co.*, 2007 WL 1087607 at *1 (N.D. Ohio Apr. 9, 2007) (a “communication is not privileged simply because it is made by or to a person who happens to be an attorney. To be privileged, the communication must have the *primary* purpose of soliciting legal, rather than business, advice.”) (internal quotation marks and citations omitted, emphasis in original); *see also Fed. Trade Comm’n v. Abbvie, Inc.*, 2015 WL 8623076 at *9 (E.D. Pa. Dec. 14, 2015) (“attorney-client privilege does not apply . . . if the client seeks regulatory advice for a business purpose”). Also, when asserting attorney-client privilege, “[t]he burden of establishing the existence of the privilege rests with the person asserting it.” *United States v. Dakota*, 197 F.3d 821 at 825 (6th Cir. 2000). *See also* docket no. 3584 at 1 (“The burden is on the proponent to prove that the documents are privileged; and to be privileged, the communication must have the primary purpose of soliciting or receiving legal, as opposed to business, advice. That line is sometimes very difficult to draw when . . . [a company] operates in a heavily regulated business and regulatory compliance advice from in-house counsel is therefore part of [the company’s] day-to-day business operations.”). “Claims of attorney-client privilege are ‘narrowly construed because [the privilege] reduces the amount of information discoverable during the course of a lawsuit.’” *In re Columbia/HCA*, 293 F.3d 289 at 294 (quoting *United States v. Collins*, 128 F.3d 313, 320 (6th Cir. 1997)).

¹ *See, e.g.*, docket nos. 1321, 1353, 1359, 1380, 1387, 1395, 1498, 1593, 1610, and 1666.

II. Rulings.

WMT PRIV 00002046		Privilege designation sustained.
WMT PRIV 00002194		Overruled.
WMT PRIV 00002198		Sustained.
WMT PRIV 00002199		Sustained.
WMT PRIV 00002200		Sustained.
WMT PRIV 00002277		Sustained.
WMT PRIV 00002278		Sustained.
WMT PRIV 00002495		Sustained.
WMT PRIV 00002565		Sustained.
WMT PRIV 00002620		Sustained.
WMT PRIV 00003122		Sustained.
WMT PRIV 00003415		Sustained.
WMT PRIV 00003610		Sustained.
WMT PRIV 00003615		Sustained.
WMT PRIV 00003711		Sustained.
WMT PRIV 00003757		Sustained.
WMT PRIV 00003812		Overruled.

III. Objections.

Any party choosing to object to any aspect of this Ruling must do so on or before March 24, 2021.

RESPECTFULLY SUBMITTED,

/s/ David R. Cohen
David R. Cohen
Special Master

Dated: March 20, 2021